

NCLB Lenient on Students' Nondisruptive Religious Practices

By Carol Chmelynski *From School Board News*

WHEN one seventh-grade Muslim student asked school officials at New Jersey's Cliffside school district to provide a place for her to pray during lunch period, she was initially told that religion has no place in a public school. But within a few days, she was granted her request, and now she goes to an empty social studies classroom while her peers eat in the lunchroom.

The student, whose parents are Sunni Muslim from Egypt, follows the tradition of praying five times a day. Previously, she was able to say all five prayers at home. But with the end of daylight-saving time, and because she participates in after-school sports, she needed to say one of the prayers at school.

Superintendent Robert Paladino says the school board's attorney gave his consent after consulting guidelines recently issued by the Bush Administration on what schools can and can't do with regard to religion. "I always thought school and prayer had to be separate," Paladino says.

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"But [the guidelines] say you have to allow for it as long as the school isn't involved."

The U.S. Supreme Court struck down organized school prayer in 1962. But students still have the right to pray on their own, as long as the school doesn't sponsor or promote their prayers, and as long as the prayers don't take place during instructional time. Under the "No Child Left Behind" Act, schools must submit a written statement to the state department of education by October 1 each year saying they won't prevent students from saying constitutionally allowed prayers.

When it's just one student or even a small number, schools usually have no problem accommodating such requests if they don't conflict with any other school activity. Problems occur when the number of students gets too large or the practice is too disruptive.

Uncommon Permission Violated Policy

This was the case with Berkner High School, in Richardson, Texas. In a move uncommon for public schools, the district had allowed groups of four or more Muslim students to conduct Friday prayer sessions at specific times and places. The school's Muslim Students Association had pushed for the change.

The district ended the practice a year ago "because the individual student prayer accommodations that the school began to make have grown far beyond what we intended," Principal Dave Casey wrote to students.

"It was not just the number of students that was an issue but how the sessions were being conducted," says district spokesperson Tim Clark. "To lead the sessions, adults from outside the school were coming in. This practice is not consistent with district policy or what Texas law allows for." The district reverted to its previous policy, allowing Muslim students who have parental permission to leave the school for prayer sessions on Fridays and then return to school afterward, he says.

School officials at the Crestwood school district in Dearborn Heights, Michigan, which has a large Muslim population, decided to close on the Muslim holiday of Eid-al-Fitr this year. About 35% of the district's 3,500 students are Muslim, and the district lost nearly \$4,000 in state funding in 2002 because so many students were absent on the holiday. While students got the day off, teachers did a districtwide inservice training session.

The district is weighing how to handle the holiday over the long term. The fact that Eid-al-Fitr does not always fall on the same date complicates the matter. ►

As America becomes more religiously diverse, more schools will be faced with these challenges. "As with most legal issues involving religion and public schools, there is no quick and easy answer," says National School Boards Association (NSBA) staff attorney Tom Hutton, who notes that Bush's federal guidelines are not a legal panacea.

"The U.S. and state constitutions protect a student's free exercise of religion from government interference," he says. "But courts generally have said that the right of children to leave school or be excused from class for religious activities does have limits: The excusals must not be too disruptive or interfere too much with the school's ability to fulfill its academic mission."

Striking a Balance from State to State

Where exactly that balance is struck varies from state to state. "Aside from legal requirements," Hutton says, "schools are well advised to do their best to try to grant such requests as a matter of good community relations, and to all students, not just Muslims."

"But if the requests threaten an adverse impact on the school's academic mission—especially in this era of high-stakes testing—most courts should show their traditional deference to the judgment of school boards and educators," he says.

Finally, Hutton suggests schools check with parents before releasing students. He notes that when one member of NSBA's Council of School Attorneys called parents to confirm a student's request, the "parents said that daily prayers are optional for Muslim minors. They wanted their child in class."

Some of the provisions in the federal guidelines can be misleading, but these are safe to follow:

- Schools may—but are not required to—excuse students from class for religious activities.
- Teachers can't lead their classes in prayer, Bible readings, or other religious activities.
- School officials can't dictate that prayer be included in school-sponsored events or select public speakers on the basis of favoring religious speech.
- Students can't be prohibited from voluntarily praying at any time before, during, or after the school day as long as it doesn't disrupt instructional time.
- Students may pray with fellow students during the school day, just as they can engage in other conversation or speech.

For the National School Board's analysis of the Bush Administration guidelines, see the Spring 2003 *Inside School Law*, at the "School Law" section of the NSBA website under "religion." ed